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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 TIMOTHY DALTON VAUGHN, *et al.*,

16 Defendant.
17
18

No. CR 19-0071-ODW-1

GOVERNMENT'S SENTENCING POSITION

Hearing Date: November 30, 2020
Hearing Time: 10:00 a.m.

19
20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorney Julia Choe, hereby
23 files its Sentencing Position.

24 This Sentencing Position is based upon the attached memorandum
25 of points and authorities, the files and records in this case, the
26 Presentence Report, the Presentence recommendation letter, and such

27 //

28 //

1 further evidence and argument as the Court may wish to consider at
2 the time of sentencing.

3
4 Dated: November 16, 2020

Respectfully submitted,

5 NICOLA T. HANNA
6 United States Attorney

7 BRANDON D. FOX
8 Assistant United States Attorney
9 Chief, Criminal Division

10 */s/ Julia S. Choe*

11 JULIA S. CHOE
12 Assistant United States Attorney

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Before the Court is a defendant who conspired to falsely report the hijacking of a flight traveling from London to San Francisco; who helped send hoax bomb and rocket-propelled-grenade threats to U.S. schools; who extorted a Long Beach company and then attacked its server when it did not comply; and who possessed graphic and violent images of child pornography.

These were not just "Internet crimes" or the pranks and hijinks of a mischievous youngster. The Internet, when used in the way that defendant did, is a serious and dangerous tool that can wreak real-life damage and real-life terror. Indeed, defendant's various crimes were designed to inflict fear and pain on this country's most sensitive targets -- airplanes, schools, and children. The Court should sentence the defendant in accordance with the scale of those crimes.

In connection with these crimes, on November 25, 2019, defendant Timothy Dalton Vaughn pled guilty to a one-count information, which charges him with Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). (Dkts. 42, 33 ("Plea").) Defendant also pled guilty to counts one and ten of the indictment, which charge him with Conspiracy to Convey Threats to Injure in Interstate Commerce, Convey False Information Concerning Use of an Explosive Device, and Intentionally Damage a Computer by Knowing Transmission, in violation

1 of 18 U.S.C. § 371; and Intentionally Damaging a Computer by Knowing
 2 Transmission, in violation of 18 U.S.C. § 1030(a)(5)(A). (Id.)¹

3 In the Amended Presentence Investigation Report ("PSR"), the
 4 Probation Office calculated a Total Offense Level of 28, and
 5 determined that the defendant falls within Criminal History Category
 6 I, resulting in an advisory guidelines range of 78-97 months'
 7 imprisonment. (Dkt. 53 ("PSR") at 4.) The Probation Office also
 8 recommended a sentence of 60 months' imprisonment on each count, to
 9 be served concurrently, as well as lifetime supervised release,
 10 restitution in the amount of \$6,463, and a special assessment of
 11 \$300. (Dkt. 52 ("PSR Rec") at 1-2.)

12 The government concurs with the Probation Office's factual
 13 findings regarding defendant's offense conduct and criminal history,
 14 and the PSR's calculations with regards to the applicable Guidelines
 15 level. Under the applicable advisory guidelines range, and given the
 16 seriousness of the crimes charged in this case, the government
 17 believes that a Guidelines custodial sentence of 78 months is
 18 appropriate.

19 **II. STATEMENT OF FACTS**

20 Defendant's criminal conduct affected a number of victims across
 21 the country.

22 **A. Defendant's Conspiracy to Send Hoax Threats**

23 During the relevant time periods, defendant was a member of the
 24 "Apophis Squad," a criminal consortium of hackers located around the
 25 world that conspired together to conduct cyber and swatting attacks
 26

27
 28 ¹ Co-defendant George Duke-Cohan was sentenced to approximately
 three years' imprisonment in the United Kingdom in connection with
 the hoax airplane threat.

1 against victims in the U.S. and the U.K. (PSR ¶ 18.) His alias was
2 "@wantedbyfeds" and "@Hacker_R_US." (PSR ¶ 19.) Defendant and his
3 co-conspirators sought to, essentially, use the Internet to create
4 chaos in the world.

5 One method of doing so was by sending hoax bomb threats to
6 school districts. Defendant obtained the email addresses of at least
7 86 school superintendents and personnel, and provided them to his co-
8 conspirator for use in those threats. (PSR ¶ 22; Plea at 14-15.)
9 Those emails included: threats that a bullied student was coming to
10 school with three bombs and a .22 caliber handgun to shoot staff and
11 students; emails claiming that student had two bombs made of ammonium
12 nitrate/fuel oil; and emails stating that rocket-propelled grenade
13 heads had been placed under two school buses, and four landmines
14 placed on the sports field. (PSR ¶ 23; Plea at 14-15.) As a result
15 of these serious threats, schools in Emeryville, California and
16 Jefferson County, New York, were forced to close. (PSR ¶ 24.)

17 Defendant also assisted in the false hijacking report of United
18 Airlines flight 949 traveling from London to San Francisco. (PSR
19 ¶ 25; Plea at 16.) Defendant obtained a copy of the flight manifest
20 and instructed his co-conspirator to report that he was the father of
21 a passenger who had called him to report that four men with weapons
22 and explosives had hijacked the plane. (PSR ¶ 25; Plea at 16.) When
23 that flight landed, law enforcement proceeded with full tactical
24 hijack protocol; the plane was quarantined and the 380 passengers and
25 crew were detained while every person was searched. (PSR ¶ 26.)

26 **B. Defendant's Extortion and Attack of a Long Beach Company**

27 Defendant acted alone as well. On January 14, 2018, he sent an
28 email to a motor sports racing company in Long Beach, California.

1 demanding \$20,000 in bitcoin to stop DDoS attacks² on the company's
2 website, hoonigan.com. (PSR ¶ 28.) When the company did not pay,
3 defendant caused a DDoS attack on the website, rendering it
4 inoperable for three days. (PSR ¶ 29; Plea at 17.)

5 **C. Defendant's Possession of Child Pornography**

6 Defendant also possessed child pornography, which included
7 graphic imagery of child abuse. Among the 121 images and 72 videos
8 of child pornography included the following:

- 9
- 10 • An approximate two-minute video named "_Pthc_-
11 _yo_stab_anal_vagina.mp4," which depicts a nude toddler
lying on her back being digitally penetrated in her anus by
an adult male;
 - 12 • An approximate three-and-a-half minute video named "(JM)
13 Updated-2017 Anal 8yo German Girl with daddy (Mix 288p and
14 1080p + Sub).mp4," which depicts a nude prepubescent girl
(approximately eight years old) lying on her back and being
penetrated in her anus by an adult male penis; and
 - 15 • An image depicting a 13-year-old victim using her fingers
16 to spread open her vagina.

17 (PSR ¶ 30; Plea at 17-18.)

18 **III. THE COURT SHOULD SENTENCE DEFENDANT WITHIN THE GUIDELINE RANGE**

19 **A. Guideline Calculations and The Plea Agreement**

20 In the plea agreement, the parties agreed to the following
21 offense level and specific offense characteristics:

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23 //

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² A DDoS attack is a method by which a victim's website is
flooded with Internet traffic, rendering it unavailable for normal
visits.

Conspiracy

Base Offense Level:	12 [U.S.S.G. § 2A6.1(a)]
More than Two Threats:	+2 [U.S.S.G. § 2A6.1(b)(2)(A)]
Substantial Disruption to Public Services:	+4 [U.S.S.G. § 2A6.1(b)(4)(A)]

Total: 18Intentionally Damaging by Knowing Transmission

Base Offense Level:	6 [U.S.S.G. § 2B1.1(a)(2)]
Sophisticated Means:	+2 [U.S.S.G. § 2B1.1(b)(10)]
1030(a)(5)(A):	+4 [U.S.S.G. § 2B1.1(b)(19)(A)(ii)]

Total: 12Possession of Child Pornography

Base Offense Level:	18 [U.S.S.G. § 2G2.2(a)(1)]
Prepubescent Minor:	+2 [U.S.S.G. § 2G2.2(b)(2)]
Exploitation of Infant/Toddler:	+4 [U.S.S.G. § 2G2.2(b)(4)]
Use of Computer:	+2 [U.S.S.G. § 2G2.2(b)(6)]
600 or More Images:	+5 [U.S.S.G. § 2G2.2(b)(7)(D)]

Total: 31**Total Offense Level: 31 [U.S.S.G. § 3D1.4]**

(Plea ¶ 20.) The government also agreed to recommend a three-level reduction for acceptance of responsibility at the time of sentencing.

(Id. ¶ 3.) This results in an agreed-upon total offense level of 28.³

The PSR calculated the offense levels as set forth above, except for an additional +4 enhancement for an intended loss of above \$15,000 for Count 10, Intentionally Damaging by Knowing Transmission. (PSR ¶ 57.) However, because the greatest offense level derived from the Child Pornography Possession count, the total offense level that

³ In the plea agreement, the government agreed not to seek a sentence above the mid-point of the sentencing range. (Plea ¶ 3(e).) In accordance with the plea agreement, the government in this sentencing paper is not seeking to advocate for a sentence above the mid-point, and indeed is seeking a low-end sentence.

1 the PSR found is also 31 (or 28 with acceptance of responsibility),
2 as calculated by the plea agreement. (PSR ¶¶ 76, 82.)

3 The PSR determined that defendant's criminal history category is
4 I (PSR ¶ 88), with zero criminal history points, with which the
5 government agrees. Accordingly, defendant's Guideline range is 78-97
6 months' incarceration. The U.S. Probation Officer did not identify
7 any factors that would warrant a departure from the Guideline range.
8 (PSR ¶ 160.) However, the Probation Officer did identify factors
9 that may warrant a sentence outside of the advisory guideline system,
10 including defendant's educational history, mental and emotional
11 conditions, employment history, disadvantaged upbringing, and post-
12 offense rehabilitation. (PSR ¶ 161.) The government disagrees, and
13 as set forth below, submits that these factors do not warrant a
14 sentence outside of the Guidelines range pursuant to 18 U.S.C.
15 § 3553(b)(2)(A)(ii).

16 **B. A Sentence of 78 Months' Incarceration is Sufficient and**
17 **Not Greater Than Necessary to Account for Defendant's Many**
18 **Serious Crimes**

19 **1. Defendant's Hoax Threats Were Dangerous and Egregious**

20 It is no accident that defendant conspired to send hoax threats
21 to a flight and to schools: those are the very places that are most
22 vulnerable and most sensitive to threats of violence and bombs.
23 Defendant know very well that sending threats to those places would
24 cause serious reactions; indeed, the hundreds of passengers on the
25 plane were met with a full hijack response team, and several schools
26 closed in response to the threats. Notably, the threats to the
27 schools were specifically designed to cause fear: the April 12 and
28 13, 2018 emails included a photograph of a plastic bottle ammonium
nitrate/fuel oil bomb; the May 7 and 8, 2018 emails threatened that

1 bombs would be placed under school transport vehicles; and the June
2 26, 2018 emails threatened that two rocket-propelled grenade heads
3 and four land mines placed on the sports field and the entrance would
4 be detonated because of the way that the schools let boys and girls
5 dressed, and not worship Allah.

6 Defendant's conduct exploited and trivialized the very real
7 tragedies that this country has suffered in terms of terrorist
8 attacks and school shootings. His conduct was a dangerous
9 distraction from the real threats that airplanes and schools face,
10 which law enforcement expends untold resources trying to protect.
11 And further, the citation to worshipping Allah was unmistakably
12 offensive and designed to wrongly provoke fear in the recipients.

13 These were not victimless crimes, nor were they the one-off
14 mischief caused by a youngster fooling around on the Internet. To
15 the contrary, these were crimes with serious implications for the
16 victims, and which were designed to cause serious terror and panic in
17 this country's most sensitive institutions. The Court should impose
18 a serious sentence, reflecting these serious offenses.

19 2. Defendant's Child Pornography Offenses Further
20 Perpetuated Harm Against Society's Most Vulnerable,
21 Some of Whom Communicated with Defendant Himself

22 "Child pornography is a vile, heinous crime. Mention the term
23 to your average American and he responds with immediate disgust and a
24 sense of unease. However, once it enters the legal system, child
25 pornography undergoes sterilization. The sterilization goes far
26 beyond properly removing emotion from sentencing decisions. Images
27 are described in the most clinical sense. Victims all too often
28 remain nameless. The only emotions on display are those of
defendants, sorry that their actions were discovered by law

1 enforcement." United States v. Cunningham, 680 F. Supp. 844, 847
2 (N.D. Ohio 2010).

3 The government urges the Court not to disregard the minor
4 victims of defendant's child pornography offenses. As the Guidelines
5 calculations in this case show, defendant's acts in possessing child
6 pornography images deserve a serious sentence. What further
7 separates this case from other child pornography possession cases,
8 however, is that defendant actually communicated directly with some
9 of the victims.⁴ The government would respectfully refer the Court
10 to the separately filed victim impact statements. The victims'
11 statements speak loudly to the harm that the distribution of their
12 images causes and how they suffer from the crimes that defendant
13 committed. The victims explain how they continue to be harmed, with
14 problems with their comfort with men and their fear that the pictures
15 are still circulating. The parents write about how their children's
16 lives have been forever changed and about the prolonged trauma that
17 will haunt their children forever. These lifetime harms suffered by
18 defendant's victims should be taken into account in fashioning a just
19 sentence here.

20 3. Defendant's Characteristics Do Not Excuse His Behavior

21 Defendant is a young man who grew up with a good relationship
22 with both his parents and his stepfather. (PSR ¶¶ 96-97.) Further,
23 at no point during these proceedings has defendant or defense counsel
24 raised a competency defense or suggested that defendant's actions
25

26
27 ⁴ Defendant has not been charged or pleaded guilty to a
28 production of child pornography charge, which would otherwise carry a
mandatory minimum sentence of 15 years. The government is not
seeking that sentence in this case, nor is it intending to suggest
that a sentence above the mid-point range would be appropriate.

1 were out of his control. There has been no expert testimony
2 submitted that defendant's mental health condition caused him to
3 commit the crimes to which he pleaded. Although defendant was
4 hospitalized as a minor for mental health issues, defendant committed
5 the crimes charged in this case when he was 19-20 years old, and
6 after deliberately choosing not to take his medications. Indeed, as
7 the PSR found, defendant did not display any obvious sign of
8 psychological dysfunction during his video conference interview with
9 the Probation Officer. (PSR ¶ 110.)

10 Although the government acknowledges that defendant has suffered
11 from a variety of mental health issues, those issues do not excuse
12 defendant's serious crimes. See United States v. Zuk, 874 F.3d 398
13 (4th Cir. 2017) (time-served sentence of 26 months in child
14 pornography case on the basis of defendant's autism spectrum disorder
15 was substantively unreasonable). The vast majority of individuals
16 with mental health issues like defendant's do not conspire to send
17 hoax bomb threats to school, nor do they possess images and videos of
18 child pornography. Defendant's conduct is the result of his
19 deliberate choices and disregard for the well-being of his victims.

20 Moreover, the record shows that defendant is actually an
21 extremely intelligent and capable individual. As the PSR notes,
22 defendant felt "frustrated at school because he felt he knew all of
23 the information being taught," and he has specialized training and
24 skill with computers. (PSR ¶¶ 123, 125.) From approximately 2014-
25 2017, defendant was employed as a computer repair technician in North
26 Carolina. (PSR ¶ 128.) Defendant has met friends online and by
27 playing video games. (PSR ¶ 126.) Indeed, the complexity of
28 defendant's crimes show a concerted and deliberate effort to wreak

1 pain on defendant's victims. Defendant extorted a Long Beach company
2 and then DDoSed the company when it did not pay; he also obtained
3 email addresses and a flight manifest in support of the hoax threats.
4 These were not the crimes of a debilitated individual who had no
5 other choice but to commit crimes. These were the crimes of an
6 individual who sought to deliberately cause harm to others.

7 Defendant's character is visible through his crimes. Defendant
8 is someone who sought to cause terror and panic in his victims, and
9 who derived pleasure from viewing the misery of children. In these
10 circumstances, defendant should serve a substantial sentence for his
11 crimes.

12 4. A 78 Month Sentence Will Ensure Deterrence And Protect
13 the Community, and Avoid Unwarranted Sentencing
14 Disparities

15 Defendant directly victimized multiple members of the community,
16 ranging from minors, to airplane passengers and school attendees. A
17 lenient sentence here will speak volumes to defendant, who likely
18 rationalized his behavior by disregarding the humanity of his victims
19 through the anonymity of the Internet. A substantial custodial
20 sentence in this case is needed to convey the seriousness of these
21 acts and to provide deterrence to others who might otherwise
22 trivialize these acts. A strong sentence would also ensure that
23 defendant cannot engage in this conduct again and that the community
24 is protected from defendant. Further, the Court must sentence
25 defendant to avoid unwarranted sentencing disparities among other
26 defendants with similar records, who have been found guilty of
27 similar conduct. 18 U.S.C. § 3553(a)(6). The best way to ensure
28 consistent sentences for similarly-situated defendants across
courtrooms, districts, and the country is to apply the sentencing

1 guidelines uniformly. United States v. Saeteurn, 504 F.3d 1175, 1181
2 (9th Cir. 2007). Here, the government recommends a Guideline
3 sentence, which will guard against sentencing disparities.

4 **C. The Court Should Impose Lifetime Supervised Release**

5 As the U.S. Probation Officer recommends, the government concurs
6 that the Court should sentence defendant to lifetime supervised
7 release. Congress has recognized the importance of supervised
8 release in the rehabilitation of sex offenders, as evidenced by the
9 five-year statutory minimum and lifetime statutory maximum terms
10 provided by 18 U.S.C. § 3583(k). The same provision also provides
11 for at least five years' imprisonment -- a particularly severe
12 sanction -- for those individuals who violate the terms of their
13 supervised release by committing an additional sex offense. Id.
14 And, as expressed by the Supreme Court, "[t]he risk of recidivism
15 posed by sex offenders is frightening and high." Smith v. Doe, 538
16 U.S. 84, 103 (2003) (internal quotation marks omitted); see also
17 McKune v. Lile, 536 U.S. 24, 33 (2002) ("When convicted sex offenders
18 reenter society, they are much more likely than any other type of
19 offender to be rearrested for a new rape or sexual assault."). Given
20 the concerns with sex offender recidivism embodied in the law, a
21 lifetime of supervised release would properly afford defendant the
22 monitoring and treatment necessary to prevent future criminal
23 conduct.

24 **IV. CONCLUSION**

25 For the foregoing reasons, the government respectfully requests
26 that this Court sentence defendant to 78 months' incarceration,
27 lifetime supervised release, and impose a special assessment of \$300.
28